

R SHEET ON SUPER PACS AND “DARK MONEY”

October 2018

BACKGROUND

Beginning in 1974, corporations and unions were prohibited from using treasury funds for independent expenditures—money spent on behalf of federal candidates but not coordinated with candidate campaigns. The Bipartisan Campaign Reform Act (BCRA) of 2002 extended that prohibition to “electioneering communications,” which cannot run within 30 days of a primary or 60 days of a general election.

In 2008, the conservative, nonprofit group Citizens United funded and distributed a video entitled *Hillary: The Movie*. At that time, Hillary Clinton was seeking the Democratic nomination for president and Citizens United strongly opposed her candidacy. Soon after the video’s release, the Federal Elections Commission (FEC) ruled that the group had violated campaign-finance law by paying for the video with general treasury funds (rather than designated campaign funds) and by running it within 30 days of the primary.

Citizens United challenged the FEC ruling. In arguments before the Supreme Court, the FEC held that the video was a form of electioneering communications, while Citizens United claimed that it was a form of free speech. In a 5-4 decision, the Court struck down the electioneering communications provisions of the BCRA, thereby allowing corporations and unions to use their treasury funds to pay for independent expenditures and electioneering communications. As a result, corporations and unions can now legally spend unlimited amounts of money on behalf of federal candidates, as long as they do not coordinate their efforts with candidate campaigns.

Shortly after *Citizens United*, the U.S. Court of Appeals for the District of Columbia issued a decision that legalized new players in the campaign-finance game: super PACs. In *SpeechNow.org v. Federal Elections Commission*, the court ruled that contributions to PACs that make only independent expenditures cannot be limited. Unlike regular PACs, which can only accept up to \$5,000 per contributor per year, super PACs can accept unlimited contributions from corporations, unions, individuals and other groups, and

SUMMARY

- Super PACs can accept unlimited contributions from corporations, unions, individuals and other groups, and then use that money to advocate on behalf of federal candidates.
- Like regular PACs, super PACs have to disclose their contributions and expenditures to the FEC.
- Provided it is not their primary activity, 501(c)(4) “nonprofit social welfare” groups are allowed to spend money on election activities. These groups do not have to disclose their donors publicly.

then use that money to advocate on behalf of federal candidates. Like regular PACs, super PACs have to disclose their contributions and expenditures to the FEC. And because they operate in the realm of independent expenditures, they cannot coordinate with candidate campaigns.

As of July 9, 2018, 2,013 super PACs reported raising \$590,881,965 and spending \$115,922,756 so far in the 2018 election cycle. In 2016, super PACs reported total spending of \$381 million.¹

Super PACs are an extremely efficient campaign vehicle because there are no limits on what they can raise and spend. However, some big donors are reluctant to give to a committee that is required to disclose its contributors publicly. This is where 501(c)(4) groups come in. Provided that spending money on election activities is not their primary activity, the Internal Revenue Service (IRS), rather than the FEC, regulates these “nonprofit social welfare” groups. However, unlike super PACs, these groups do not have to publicly disclose their donors.

CURRENT DEBATE

Because 501(c)(4) groups can give unlimited amounts of money to super PACs, they provide anonymous donors a

1. For more see: “Super PACs,” Opensecrets.org, Aug. 2, 2018. <https://www.opensecrets.org/pacs/superpacs.php>.

way to “launder” contributions *en route* to super PACs. For this reason, contributions from these groups are often referred to as “dark money” because the original source of the money is not publicly disclosed. Many super PACs now have affiliated 501(c)(4) organizations so that donors who want to hide their contributions to super PACs have an easy outlet for doing so: They simply give to the (c)(4) and the (c)(4) gives to the super PAC. The name of the (c)(4) is disclosed but not the name of the original donor. In 2016, 501(c)(4) groups reported \$146 million in spending. In the 2012 presidential cycle, these groups reported spending \$257 million.²

During the George W. Bush and Obama administrations, the IRS came under fire for targeting donors to both conservative and liberal nonprofits. While the names of donors to 501(c)(4) groups are not publicly disclosed, they were reported to the IRS and the agency’s inspector general found that some IRS officials had inappropriately sought information on donors to these groups. Donor names were also inadvertently disclosed on a number of occasions, which raised privacy concerns. These lapses fueled calls for changes to the IRS’s disclosure requirements.

On July 17, 2018, the Trump administration announced that it will stop requiring 501(c)(4) groups to disclose the names of large donors to the IRS. Proponents of this change argue that it will reduce compliance costs for nonprofits and protect donor privacy. Critics claim that it will make dark money even darker and potentially allow foreign money to enter our elections.

On Sept. 18, 2018, the Supreme Court denied a stay in a landmark dark money case. As a result, anyone spending more than \$250 on express-advocacy ads (those that tell voters who to support or oppose) must disclose contributors who gave more than \$200 in a year, as well as donors who earmarked their contributions for express ads. This means that 501(c)(4) groups that pay for and run express-advocacy ads must now reveal certain donor names. The decision does not affect 501(c)(4) contributions to super PACs, however. These remain “dark.”

Limited liability corporations (LLCs) are another outlet for campaign donors who wish to remain anonymous. While these easy-to-establish structures are often set up by businesses to protect owner assets, many LLCs also mask owner identities. Tracking down an LLC’s original source of money can be very challenging and for this reason, when these entities make large political contribu-

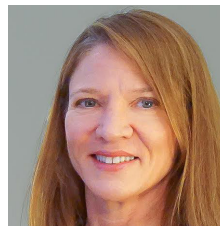
tions, it is often unclear who (a corporation, an individual or even a foreign entity) is behind the contribution.³ In 2016, about 850 LLCs gave almost \$32.2 million to super PACs. In the 2014 midterm elections, approximately 290 LLCs gave \$8 million, and in the 2012 election, 310 LLCs donated \$22 million.⁴

KEY FACTS

- Some contributions to 501(c)(4) groups are referred to as “dark money” because donors are allowed to remain anonymous.
- The Trump administration has announced that it will no longer require 501(c)(4) groups to disclose the names of their large donors to the IRS, ostensibly reducing compliance costs and protecting donor privacy.
- Critics claim that the move will make dark money even darker, potentially allowing foreign money to enter our elections.
- Alternatively, donors who wish to remain anonymous can use LLCs to make similarly untraceable contributions to super PACs.

CONTACT US

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2. Totals include political spending reported to the FEC only. <https://www.opensecrets.org/outsidespending>.

3. The FEC provides contribution guidelines and prohibitions for LLCs on its website at <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute>.

4. For more, see Ashley Balcerzak, “Surge in LLC contributions brings more mystery about true donors,” Opensecrets.org, April 27, 2017. <https://www.opensecrets.org/news/2017/04/surge-in-llc-contributions-more-mystery>.